

**STATE ALLOCATION BOARD**

1130 K Street, Suite 400  
Sacramento, CA 95814

**IMPLEMENTATION COMMITTEE MINUTES**

August 3 & 4, 2006

Legislative Office Building  
Sacramento, CA

**Members Present**

Mavonne Garrity, SAB  
Kathy Hicks, OPSC  
Fred Yeager, CDE  
Chad Rohrs, DOF  
Constantine Baranoff, SSD  
Mark DeMan, LAUSD  
Richard Conrad, DSA  
David Walrath, SSDA (Aug. 3<sup>rd</sup> only as alternate for  
Debra Pearson)  
Debra Pearson, SSDA (August 4<sup>th</sup> only)

William Savidge, CASH (Aug. 3<sup>rd</sup> only as alternate for  
Eric Hall)  
Eric Hall, CASH (August 4<sup>th</sup> only)  
Dennis Dunston, CEFPI  
Margaret Brown, CASBO (Alternate for Peggy Reyes)  
Gary Gibbs, CBIA  
William Cornelison, CCSESA  
Jay Hansen, SBCTC (August 4<sup>th</sup> only)  
Brian Wiese, AIA (August 4<sup>th</sup> only)

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The minutes for the July 21<sup>st</sup> were requested to be corrected to reflect Richard Conrad, instead of Dennis Bellet, as the official representative for the Division of the State Architect on the Committee.

The items for discussion were presented in the following order: Supplemental Funding for Accessibility Requirements on Modernization Projects, Small High School Program, High Performance Schools Incentive Grant, Charter School Facility Program, and Grant Increases. The Career Technical Education Program item was not discussed due to insufficient time.

**EXCESSIVE COST HARDSHIP GRANT FOR ACCESSIBILITY REQUIREMENTS ON MODERNIZATION PROJECTS**

This item was introduced by Mavonne Garrity and presented by the Office of Public School Construction (OPSC) staff member Karen Sims.

Staff presented proposed regulations that reflected what was agreed upon at the previous meeting. When calculating the maximum allowance for the excessive cost hardship grant, seven percent of the State and district share of the modernization base grant will first be considered available for accessibility work. Some members of the Implementation Committee (Committee) and audience did not agree with the seven percent as being intended for the purposes of accessibility and there was discussion on how the seven percent of the base grant amount for access compliance was determined. Staff stated that in the Lease-Purchase Program, up to ten percent of the modernization allowance was for access compliance and at the time of conversion to the School Facility Program, it was intended that a portion of the modernization base grant be used for access compliance. It was agreed upon that Staff would note the concerns in the item presented to the State Allocation Board (SAB). Staff also agreed to provide a worksheet on the OPSC Web site to aid districts in determining the amount of the excessive cost hardship grant for their project.

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## **EXCESSIVE COST HARDSHIP GRANT FOR ACCESSIBILITY REQUIREMENTS ON MODERNIZATION PROJECTS (cont.)**

Discussion continued regarding the maximum amount that a project could receive for an excessive cost hardship grant. Dave Walrath, representing the Small School District Association, requested to go on record that the Small School District Association does not support a cap on the amount a project can receive for access compliance.

One member questioned if the replacement of displaced or lost facilities such as parking spaces and toilets resulting from required accessibility work would be allowed/considered as an eligible accessibility cost. Staff agreed to look into the matter.

There was also discussion if the excessive cost hardship grant included soft costs. Committee members and the audience thought a portion of the soft costs should be included in the excessive cost hardship grant; however, the modernization base grant already includes funds for soft costs. Staff agreed to consider soft costs.

Staff proposed that if the modernization project is a replacement-in-like kind pursuant to Regulation Section 1859.79.2(a)(1), the excessive cost hardship grant would be three percent of the modernization base grant.

Staff agreed to present the proposed regulations on an emergency basis at the next available State Allocation Board meeting.

## **SMALL HIGH SCHOOL PROGRAM**

The topic was presented by Steve Paul from the OPSC. Assembly Bill (AB) 127 provides \$200 million for the construction of new small high schools and the reconfiguration of existing high schools, which have a minimum of 1000 high school pupils, into two or more smaller high schools for the purpose of academic achievement and success in a small learning environment. The statute did not provide any changes to the Small High School Pilot Program.

Staff presented the following issues that were raised at a prior Committee meeting for discussion:

- At the July 7, 2006 Implementation Committee meeting, a member indicated that AB 127 allows for the construction of small learning communities and small high schools, since the legislation references small learning communities and small high schools.

Staff re-examined the language of AB 1465, and reported that while the statute does reference small learning communities, it speaks of them only as the result of the construction of small high schools and the reconfiguration of existing school facilities. Legal Counsel and Staff stated that small learning communities are programmatic in nature and that perhaps future legislation could include small learning communities, but at this time, the OPSC could not recommend funding this type of program under AB 127.

- An audience member previously asked if a new small high school could be built on the site of an existing large high school if that site had excess land available.

Staff reported that Legal Counsel opined a district could use a portion of an existing large high school site to build a small high school if the California Department of Education (CDE) determines that the creation of the small high school does not create a school with an inappropriate number of pupils in relation to the size at either site. The small high school must have a separate CDS code and administration.

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**SMALL HIGH SCHOOL PROGRAM (cont.)**

- Several audience members cited the aggregate amount of \$500,000 is insufficient to reconfigure a large high school into two or more small high schools. In addition, there were members in the audience that felt the aggregate amount should be for each small high school created.

Staff re-examined the statute regarding the \$500,000 for the purposes of reconfiguration. Since a high school of 1000 or more pupils must be reconfigured into two or more smaller high schools, Staff reported that it does not appear equitable that a high school that is reconfiguring into five small high schools receive the same amount of reconfiguration funds as a high school reconfigured into two small high schools. Therefore, Staff proposed that each new small high school created may be eligible to receive up to \$500,000 for the purpose of reconfiguration.

*Example*

- A high school of 1000 pupils reconfigures into 4 small high schools of 250 pupils each.
  - The district may receive up to \$500,000 for each small high school created.
  - The district has created 4 new small high schools, so the district may receive up to \$2 million.
- Staff initially proposed that the \$200 million should be an 80/20 split with 80 percent for new construction and 20 percent for modernization for the purpose of reconfiguration. Staff reconsidered this proposal and stated that the \$200 million will remain in one fund for both new construction and modernization.

The following questions and concerns were raised at this Committee meeting:

- An audience member suggested that alternative or special education schools should not be purposely excluded from participation in the Small High School program. It was requested that the language of the regulation be open to the possibility of their inclusion.

The CDE will check to determine if there are any schools of this type in California that would meet the requirements of a Small High School. The current regulation language does not purposely exclude alternative or special education schools, but considering these schools are already small in nature, their participation may not viable to the pilot program. Staff did agree to be flexible to increase participation.

- An audience member would like to see an extension of the timelines for application submittals.

Staff advised the timeline is driven by Statue and has a sunset clause that cannot be extended. Furthermore, future informational workshops will be set up by the OPSC to educate all stakeholders. CASH offered their assistance to collaboratively set up the workshops.

- A member raised the issue of enabling small learning communities to be funded within this legislation.

The CDE could not support small learning communities at this time, since the small learning communities must be the result of the construction of small high schools. The Chair advised that those parties that worked on AB 1465 will be working closely with Assembly Member Chan to include small learning communities as eligible under the pilot program.

The following proposals were mutually agreed upon by the Committee and audience members:

#### New Construction

- Should AB 127 be implemented with the passage of the November 2006 Bond, the application submittal date requirements will have already expired. Staff proposed that an additional funding cycle be implemented to insure all prospective applicants have an equal opportunity to have their Academic Reform Strategy (ARS) reviewed and scored by the CDE and receive full funding on their applications. The following timeline was agreed to:
  - Districts must submit their ARS to the CDE no later than February 1, 2007.
  - CDE shall provide the OPSC applicant scores by April 1, 2007.
  - Districts will be required to submit their new construction applications for the new small high school no later than September 30, 2007, to ensure funding at the December 2007 SAB.
- Modernization Reconfiguration applications will continue to be accepted on a continuous basis until September 30, 2007.
- Districts would qualify for the Small High School funding if the small high school is located adjacent to an existing high school that includes core facilities, and the students from the small high school may share those core facilities. Additionally, two small high schools could be built on separate but adjacent sites, and both schools would be allowed to share the core facilities of the other. In both instances, the following restrictions would apply:
  - Core facilities, such as multipurpose rooms, gymnasiums and libraries can be shared.
  - The administration and toilet facilities cannot be shared.
  - Any Small High School that shares the core facilities of an existing high school would not be entitled to the New School Excessive Cost Hardship Grant.
  - Two small high schools built immediately adjacent to each other would be eligible for the New School Excessive Hardship Grant providing each are constructing core facilities the other does not have. If only one small high school will be providing the core facilities, only that small high school would be eligible for the New School Excessive Hardship Grant.

Staff will make minor revisions to the regulations to be presented to the SAB.

#### **HIGH PERFORMANCE SCHOOLS INCENTIVE GRANT**

The topic was presented by Steve Paul from the OPSC. AB 127 provides additional new construction and modernization incentives in the amount of \$100 million for the designs and materials that promote the efficient use of energy and water, natural lighting and indoor air quality and recycled materials

At the July 7, 2006, Implementation Committee meeting, Staff presented proposals for the self certification, rating criteria, grant percentage increase and distribution of funds. After much discussion, a work group was formed to provide input on the High Performance School Grant requirements and incentives. The following proposals were presented at this meeting:

#### *Rating Criteria*

- The High Performance Rating Criteria (HPRC) for New Construction and Modernization will be used to evaluate the costs of design and materials that promote the efficient use of energy and water, the maximum use of natural lighting and indoor air quality, the use of recycle materials and materials that emit a minimum of toxic substance, the other use of acoustics conducive to teaching and learning, and other characteristics of high performance schools. To ensure the HPRC closely mirrors the adopted guidelines of the Green Action Team, the HPRC will be based on the Collaborative for High Performance Schools (CHPS).

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## HIGH PERFORMANCE SCHOOLS INCENTIVE GRANT (cont.)

- New Construction projects on new sites must meet all requirements (prerequisites) in all HPRC categories; then, the district may pick the credits they wish to pursue. For those new construction projects that have a Division of Architect (DSA) received date prior to August 24, 2007, the point range will be 28 to 81 points, based on the 2001 performance guidelines. All applications received on or after August 24, 2007, must meet the 2006 performance guidelines, and Districts must achieve a score between 32 and 85 point to qualify for the High Performance Grant. The six categories used for the HPRC are as follows:
  - Site
  - Water
  - Energy
  - Materials
  - Indoor Environmental Quality
  - District Resolutions
- Additions to an existing site and modernization projects will be required to meet those requirements (prerequisites) that are within the scope of the project; then, as with new construction, districts may pick the credits they wish to pursue. It is anticipated that the addition/modernization threshold will be 25 points. The maximum points attainable will be 81.
- The work study group did consider creating a minor HPG program available to those districts who could only meet the energy requirements and one point in any other category. One member expressed concerns for the deletion of the minor modernization grant. However, the OPSC and DSA stated this would be counterproductive and does not meet the intent of High Performance Schools.

### *Funding*

- Staff stated that two options for the incentive grant will be presented to the SAB for their consideration, as follows:

#### Option 1

While the HPG is an incentive based program, there are substantial operational savings to be realized by participating districts. The Board may want to consider any savings that are generated by a district's participation in High Performance Schools, of which the State will not be a financial beneficiary, and provide grant funding to cover 50 percent of the costs for the design and materials to be shared equally between the state and the district.

#### Option 2

- The HPG will be an incentive based grant that will provide from two to nine percent applied to the base grant to cover the costs of design and materials of a High Performance School. This incentive grant includes upfront costs for the High Performance School to be shared equally between the state and the district.

A member expressing support for Option 2 stated the State would benefit from high performance schools as the Governor has encouraged participation in high performance schools by adopting the Green Building Initiative.

## **HIGH PERFORMANCE SCHOOLS INCENTIVE GRANT (cont.)**

Another member stated that the percentage of increase should be based on the cost savings and not upfront costs. Under Option 2, the money would not last long. If Option 2 is supported by the SAB, it should be capped at four or five percent.

A representative from the DSA indicated that a typical new construction project would achieve 41 points under Option 2, and this would translate to a four percent increase to the base grant. He further advised that the money for high performance should last since it is more difficult to reach the higher percentages.

A member voicing support for Option 2 indicated that small school districts as well as districts that are financial hardship would have a difficult time trying to apply for these funds and could not wait for the financial savings to pay for the increase in cost of more high performance schools. In addition, not all high performance upgrades will present actual savings to the district.

Most audience members felt that DSA's determination that the increase would start at 2% is a good starting point for the program while some felt that percentages were too low. However, if it is determined that participation is too low or too difficult to achieve, the discussion will be brought back to a future Implementation Committee meeting for possible adjustments.

- A member indicated that "lumping" the funds together might leave the modernization program without possible funding. Staff stated that the regulations would be written to provide flexibility in the apportionment of incentive grants.

Staff indicated it will prepare regulatory language to be presented at the next available Implementation Committee meeting.

## **CHARTER SCHOOL FACILITY PROGRAM**

This item was introduced by Mavonne Garrity and presented by OPSC staff members Juan Mireles and Barbara Kampmeinert.

Staff explained that the filing period for the Charter School Facilities Program (CSFP) would begin 90 days after the passing of the bond and would be open for a period of 120 days thereafter. In addition, staff clarified that there was no need for a school district to have new construction eligibility in order for a project to be submitted or apportioned. The district's new construction eligibility, however, would be adjusted according to the number of the district's unhoused students that the project would house, pursuant to Article 3 commencing with Education Code Section 17071.75. Any adjustment to a district's new construction eligibility would be determined by a district certification of the number of the district's unhoused students that will be housed in a charter school project even if a district's eligibility was negative or became negative after the adjustment. Staff also explained that projects that had already received apportionments in prior rounds of funding would not be allowed to participate under the new program. The details of the application process were then explained including the need for the district to report the reasoning behind the number it determined in its certification. Staff reported that the OPSC reserved the right to review and audit the applications and supporting documentation.

Concerns were expressed over competition between charter school and district applications, especially over a charter school's ability to receive a preliminary apportionment versus the requirement that a district must have approved plans to receive an apportionment. It was suggested that any eligibility adjustment for a charter school project be completed after the project received approved plans, but staff clarified that preliminary apportionments for charter schools were statutory. Possible and various methods a district could use to make its certification were discussed. Staff

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**CHARTER SCHOOL FACILITY PROGRAM (cont.)**

explained that the certification process would provide the most accurate information at the local level so that the State does not over fund school facilities.

Staff also presented the rehabilitation portion of AB 127. Charter School Facility Program Rehabilitation work may include, but would not be limited to, structural changes or other types of work on an existing district facility that extends the useful life of or enhances the physical environment of the school. Staff explained that the regulations would provide language that would clarify the types of work included in rehabilitation, but the facilities could be permanent or portable and must be at least 15 years old. A district could apply for funding on behalf of a charter school or a charter could apply independently as long as there was an agreement with the district in place at the time the preliminary apportionment application was submitted. Funding would be based on the same square footage amounts as the current Joint Use and Facility Rehabilitation rates not including additional grants, which would also be available. Funding would be capped at the new construction pupil grant amount.

Discussion ensued in regard to a charter school's use of more classrooms than for which it received funding. Staff explained that a charter would be funded for as many classrooms as it had pupils, according to the loading standards, and that it could use the funding for additional classrooms, but it would not receive additional funding. Also, there would have to be an agreement between the charter and the district to use any additional classrooms. Staff clarified that existing facilities cannot have been previously built or modernized with School Facility Program (SFP) funding.

Staff went on to explain the effect CSFP rehabilitation would have on a school site's modernization eligibility. If a school site had not established modernization eligibility, the rehabilitated building would be considered modernized for purposes of future modernization eligibility establishment. For school sites that had established eligibility, but had not received modernization funds, the eligibility would be adjusted to exclude rehabilitated buildings. For school sites that had established eligibility and used a portion of it, the rehabilitation grant would be offset by the previous amount of modernization funding that had been received. School sites that had exhausted their established eligibility would not be eligible for CSFP rehabilitation funding.

The meeting ended and it was agreed that the discussion on the Charter School Facility Program would continue the following day.

Ms. Garrity reopened discussion the following day on eligibility requirements for the Charter School Facilities Program (CSFP) and introduced Rick Simpson, Deputy Chief of Staff, Office of the Speaker of the Assembly. She also stated that members of the Department of Finance, who were also involved with the AB 127 negotiations, were also present. Staff explained the CSFP new construction eligibility adjustment requirements as presented at the August 3, 2006, Implementation Committee.

Mr. Simpson stated that the intent of the legislation was to separate a charter school application from a school district's new construction eligibility by allowing the district to decide if a charter project would house its students and what that number was. He stated that the four offices and the governor had agreed to the language as written. Since there was a concern about double funding school facilities, it was agreed that the district would determine the number of pupils to be adjusted against the district's baseline eligibility. He also stated that there was no intent to have an audit of the process used by a school district to determine the number of unhoused pupils certified by a district. Mr. Simpson expressed concern that the proposed regulations were not consistent with the intent of the law.

There was discussion about the reference in the legislation to Article 3 Section 17071.75 and whether the reference meant that the number of unhoused students certified to as being housed came from the district's new construction baseline.

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## **CHARTER SCHOOL FACILITY PROGRAM (cont.)**

A representative of the Department of Finance stated that the district certification as to the number of district unhoused students in a charter school project was included in the bill to provide a means to reach a realistic number and that the bill was silent in regard to an audit of the number.

There was dialogue about the charter's ability to receive a preliminary apportionment when a school district was in the process of planning a school using the same eligibility. Reducing the eligibility for a charter school at the end of the project or allowing school districts to reserve eligibility were discussed as possible solutions. Possible methodologies for determining whether pupils are housed were also suggested. The authority to make such changes was questioned.

Staff and members of the Department of Finance suggested that the number of pupils to be housed in a charter school should meet a test of reasonableness and that was why the district certification language was included in the bill. All other program certifications were able to be audited. The Chair also felt that overcrowding should be addressed.

It was agreed that a small work group, including those involved in the bond negotiations, should analyze the issues and bring them back to the Implementation Committee.

Staff then introduced the rehabilitation component of AB 127 and explained the eligibility adjustments, requirements and allowances of the rehabilitation component. Discussion ensued and scenarios were tested. Staff continued with an explanation of preference points, which favors existing facilities. It was suggested that the overcrowding preference points calculation be reviewed.

Staff went on to explain that site acreages were no longer limited in the new legislation and that the CDE would be providing estimated recommended acreage prior to a charter submitting a preliminary apportionment application. Any savings on the purchase of a site would not be available for construction costs; however, additional construction grants would be available at conversion. Prior to the fund release for either the site acquisition or the full funding, a tri-party agreement would have to be in place. Staff then explained the nature of the Use Agreement, the Memorandum of Understanding and the Funding Agreement. Staff went on to state that clarification language would be added to the regulations regarding the free/reduced lunch data used for low income preference points. Also, the locale codes (which are used to determine whether a project is located in an urban, suburban, or rural area) had been updated and would be incorporated into the regulations. Staff then explained the tie breakers for identical applications. It was suggested that the first tie breaker, which would be in favor of an applicant that had not been previously funded under the SFP, CSFP or the Charter School Facilities Grants Incentives Program, be scrutinized for larger entities that may own subsidiary organizations. Funding would then go to applications that used existing facilities, relieve overcrowding, then to a lottery.

## **GRANT INCREASE**

The topic was introduced by Mavonne Garrity and presented by OPSC staff member Karen Sims.

This item was previously presented at the July 7, 2006 Implementation Committee meeting. At that meeting members of the Committee were concerned about the methodology used to determine the adjusted per-pupil grant amount. Based on their comments and Staff's analysis, the methodology was changed to use a cumulative increase when applying the Construction Cost Index (CCI) to the increase in the new construction base grant. This methodology is consistent with current regulations.

Staff presented proposed changes to the *Fund Release Authorization* (Form SAB 50-05) and the *Expenditure Report* (Form SAB 50-06) in order to gather data to analyze and determine the per-pupil grant adjustment starting in January 2008. There was much discussion on the changes to the forms. Committee members and members of the audience were concerned about how the information is to



be used to determine the increase/decrease to the new construction base grant. Another main concern was that the forms were not necessarily capturing accurate information. Members of the audience stated that school districts design and build to their budgets. Since districts know the budget, key components may be scaled down or not designed into the project from the beginning; therefore, these components are never bid and a true picture of the project is never captured. Staff requested suggestions from both the Committee members and the audience on how the forms can be better improved to capture accurate information and the true cost of building schools today and in the future. Staff also suggested that the Committee members and audience forward their suggestions to the OPSC after the meeting.

The discussion was also continued from the last meeting on how and when the per-pupil adjustment might be applied. It was suggested that the increase to the new construction base grant be separate from the consideration of the CCI; however, Staff commented that the information received on the Form 50-05 and Form 50-06 will include the same information that is used to determine the CCI. Therefore, it is imperative that all factors be analyzed when preparing a recommendation to the SAB. Staff stressed that even though the OPSC is taking into consideration the change in the CCI for that year when making its recommendation, the SAB still has the option of increasing the grant up to the six percent maximum. The Committee requested that the law be clarified in regulation and that if the CCI is taken into account, that the information used to do the analysis be based on data from the same year.

The OPSC recognized the various concerns and agreed it would consider the suggestions and present the proposed regulatory changes at the September Implementation Committee meeting.